



SARA A. AUSTIN

DATE: June 23, 2016
TO: The Senate State Government Committee
FROM: The Pennsylvania Bar Association
SUBJECT: S.B. 413, P.N. 363

I am writing on behalf of the Pennsylvania Bar Association's 27,000 members to raise concerns regarding S.B. 413, P.N. 363, as it is currently written. The PBA represents numerous attorneys who practice in the area of Workers' Compensation law and in front of the Environmental Hearing Board, all of whom will be negatively impacted by this proposed legislation. The PBA will seek appropriate amendments as this bill moves through the legislative process.

Workers' Compensation has always been viewed as a highly specialized area of administrative law. Workers' Compensation Law has well-established procedures for hearings, decision requirements and evidentiary issues. In the 1996 amendments to the Workers' Compensation Act there were extensive provisions for the professionalization of Workers' Compensation Judges. The judges are now all required to be attorneys with a minimum of five years of experience in the field of Workers' Compensation law, and must pass a proficiency exam in Workers' Compensation law. In addition, with regard to attorneys, the Pennsylvania Supreme Court has recognized a certification for attorneys as specialist in Workers' Compensation Law. The specialized knowledge required in this field of law is evidenced in the variety of unique legal analyses that the Workers' Compensation Judges must perform on a routine basis.

Similarly, the Pennsylvania Environmental Hearing Board has a long history as an independent quasi-judicial agency. The Department of Environmental Resources (now known as the Department of Environmental Protection) was uniquely structured to have its own regulatory arm (Environmental Quality Board) and its own quasi-judicial arm. The quasi-judicial arm, the Environmental Hearing Board, was given the sole power to hear and decide appeals from Department actions. Although initially the Environmental Hearing Board was given semi-independent status, in 1988 the General Assembly made the EHB completely independent of the Department of Environmental Protection. The EHB is no different from courts in that the parties conduct discovery, file motions and present testimony and the Board issues formal opinions which are published and used as precedent in subsequent cases. Publication of opinions would either not occur, or would be diluted, if the EHB's power was transferred as contemplated by Senate Bill 413. Senate Bill 413 would transfer resources of agencies that fall under the scope of 2 Pa.C.S. Chapter 5 Subchapter A to the newly created Office of Administrative Appeals. Effectively, the Pennsylvania Environmental Hearing Board, which is an independent quasi-judicial agency with the power and duty to hold hearings and issue adjudications under 2 Pa.C.S. Ch. 5 Subch. A., would be eliminated.

On behalf of the Pennsylvania Bar Association, thank you for considering our perspective on this legislation. If you have any questions on this matter, please do not hesitate to contact me or PBA's Director of Legislative Affairs, Fred Cabell at 717-525-1579 or fred.cabell@pabar.org.

Sincerely,

Sara A. Austin, President
Pennsylvania Bar Association